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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
MTS and WATS Market Structure)
)
Amendment of Part 36 of the)
Commission's Rules and)
Establishment of a Joint Board)
_____)

RM No. 8408

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JAN 14 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

OPPOSITION OF SPRINT COMMUNICATIONS

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January 14, 1994

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SUMMARY

AT&T's Petition is flawed by serious internal inconsistencies which make it difficult to determine the precise relief that it is seeking. All that can be gleaned from the petition is that AT&T is seriously dissatisfied with the existing method of Universal Service Fund allocation based on presubscribed lines. Although AT&T suggests that the Commission initiate one or more new rulemakings to establish a revenue-based method of allocation, there is no way of knowing precisely what AT&T intends to accomplish in any such further proceeding; how such proceeding would relate to AT&T's earlier request for rulemaking in 1989; or how such proceeding would relate to the Commission's recently completed interim investigation and soon-to-be-initiated comprehensive investigation in CC Docket No. 80-286.

On the one hand, AT&T insists that the question of USF allocation is so closely related to questions concerning the size of the USF--which the Commission is considering in CC Docket No. 80-286--that a rulemaking must be considered "concurrently" or "simultaneously" with the proceedings in CC Docket No. 80-286. On the other hand, AT&T is equally adamant that the issue of cost allocation cannot await the Commission's comprehensive investigation in that docket and must be considered earlier. As for the interim investigation in CC Docket No. 80-286, that proceeding has already been completed and AT&T could not, in any case, given the timing of its petition, seriously have expected that any relief requested would be concurrent with the

Commission's interim decision. These contradictions make it difficult to discern AT&T's purpose. To the extent that AT&T's petition herein was intended to convey a "heightened" concern regarding the current allocation methodology and a demand for more rapid action by the Commission, this could more easily and appropriately have been conveyed by AT&T in a letter to the Commission regarding AT&T's earlier request for a rulemaking.

AT&T has also made no showing that the existing method of allocating USF costs is unfair, discriminatory or in any way unlawful. Specifically:

- AT&T has not shown that it is burdened by its monopoly past or continuing obligations as a "carrier of last resort." AT&T has no special status not shared by its IXC competitors. Any additional obligations for AT&T that may remain in areas that have not yet been converted to equal access are more than offset by the fact that AT&T receives all 1+ traffic from such unconverted exchanges.

- AT&T has not shown that the allocation of USF costs based upon presubscribed lines is discriminatory. Since the monies collected by the USF are intended as a subsidy, these monies cannot be allocated on a cost-causative basis and, at least from an economic standpoint, any means of allocation must be considered to be largely arbitrary. If anything, since the USF subsidy is designed to support nontraffic sensitive loop plant, it would seem equitable to recover these costs on a nontraffic-sensitive basis from other nontraffic sensitive loop plant: that is, by assessing a flat charge on IXCs for each prescribed line. AT&T's contrary argument is based on a rather

obvious logical flaw. AT&T has simply assumed the conclusion that needs to be proven; i.e., it has assumed that "revenues" are the only legitimate basis upon which USF costs can be allocated. Based on this assumption, AT&T regards any amount paid to the USF in excess of what would be paid under a revenue-based allocation as discriminatory. However, since AT&T's premise is incorrect, its claim of discrimination is incorrect as well. The fact that AT&T may make a higher contribution to the USF based on presubscribed lines than would be the case with an allocative methodology based on "revenues," proves nothing other than that the two methodologies are different.

- AT&T has not shown that it is unfairly burdened by its regulatory past. The "first in" advantages obtained by AT&T as a result of its monopoly past are of enormous value to it. AT&T obtained the lion's share of interexchange traffic--both high volume and low volume users--without having to spend a dime on marketing or sales expense. These traffic volumes have enabled AT&T to achieve efficiencies and, more recently, a level of access charges, that no competitor can obtain. The fact that AT&T's monopoly past has also left it with a higher percentage of low volume presubscribed customers than its competitors does not even begin to offset the advantages received as a result of this same monopoly status. On balance, AT&T's position is not "anomalous," as it suggests, but, rather, quite enviable.

- AT&T has not shown that competition is threatened because allocating USF costs based on subscriber lines would "artificially" discourage IXCs from seeking out and serving low volume users. No matter that method is chosen to allocate USF

costs, usage will be discouraged. However, there is no threat to competition for low volume users.

Finally, it is clear that allocation of USF costs on the basis of presubscribed lines presents few, if any, administrative problems. A count of presubscribed lines is readily obtained and readily verifiable. Thus, the existing method of allocation avoids serious difficulties that would inhere in any revenue-based allocation scheme.

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OFFICE OF THE SECRETARYOPPOSITION OF SPRINT COMMUNICATIONS

Sprint Communications Company L.P. ("Sprint"), pursuant to the Commission's December 15, 1993 Public Notice (Report No. 1990) and Section 1.405 of the Commission's Rules, hereby opposes AT&T's Petition for Rulemaking in the above-captioned matter, filed on November 24, 1993.

AT&T's petition requests that the Commission establish "a rulemaking proceeding or proceedings" to consider replacing the present method of calculating Universal Service Fund ("USF") contributions based upon presubscribed lines, with a method based upon each carrier's share of "revenues" for the preceding calendar year (AT&T petition at 1, 12-13). AT&T further requests that such "rulemaking" or "rulemakings" be initiated to provide relief "...simultaneously with the Commission's comprehensive review of other issues related to the USF" (*id.* at 14-15). Finally, in addition to such "permanent" relief, AT&T requests that a "revenue-based alternative mechanism for allocating costs to interexchange carriers" be implemented on a "temporary" basis, "simultaneously" with the Commission's proposed two-year cap on

USF growth recommended by the Federal-State Joint Board which became effective on January 1, 1994 (id. at 2, 15). For the reasons explained below, there is no basis for initiating a rulemaking or otherwise granting AT&T the relief requested. Indeed, it is far from clear as to what relief AT&T is seeking.

I. ALTHOUGH THE RELIEF SOUGHT BY AT&T IS UNEXPLAINED AND SELF-CONTRADICTORY, IT IS CLEAR THAT NO PURPOSE WOULD BE SERVED BY INITIATING THE ADDITIONAL "RULEMAKING OR RULEMAKINGS" REQUESTED BY AT&T.

All that can be gleaned from AT&T's petition is that it is unhappy about the Commission's present method of allocating USF cost based upon prescribed lines and that it would prefer an allocation method somehow based upon "revenues." However, because of internal inconsistencies and outright contradictions, there is no way of knowing the nature or timing of the "rulemaking" or "rulemakings" (even the number is uncertain) that AT&T is requesting.

AT&T states that

[t]he purpose of this Petition is to ensure that the Commission addresses this critical issue [i.e., USF cost allocation], both in conducting the upcoming comprehensive review of USF issues, and in fashioning interim measures to govern the operation of the USF during that review (id. at 2).

This statement is then followed immediately by a footnote (n. 2) cautioning that "the allocation issue...should not be addressed" in a Commission rulemaking to consider broader changes in Part 36. AT&T argues that "[c]ontrolling the size of the high cost fund presents a host of complex questions, many of which...must be referred in the first instance to the Joint Board" whereas "[r]evision of the allocation mechanism involves a single issue

that is solely within the Commission's jurisdiction" (id. at 2, n. 2). AT&T further insists that "in view of the unlawfulness" of the present method of allocating USF costs, the replacement of that method cannot await "the conclusion of [the Commission's] rulemaking on other USF issues" (id.).

These statements plainly cannot be reconciled. The Commission cannot consider the method of allocating USF costs "in conducting the upcoming comprehensive review of USF issues" (id. at 2) "concurrently" (id. at 5, 14) or "simultaneously" (id. at 1) with that rulemaking, and also resolve the question of allocation in a separate rulemaking which takes place, and is concluded, prior to that comprehensive review.

It is equally apparent that whatever the nature and timing of the "permanent" relief sought by AT&T, its request at this point for a separate rulemaking makes no sense. If, as AT&T strongly suggests, comprehensive Part 36 rules cannot be considered apart from the method of allocating USF costs (id. at 2, 11-12), it would seem that the only appropriate course for AT&T to follow would be to argue its position in its comments in the comprehensive Part 36 rulemaking itself. No apparent purpose would be served by the establishment of a separate rulemaking to address USF cost allocation "concurrently" or "simultaneously" with the other issues on the comprehensive investigation. If the issues as to the size of the fund and its method of allocation are so closely tied that they must be considered at the same time, it is hard to justify considering these issues in separate investigations.

On the other hand, if, as AT&T also strongly suggests, a change in allocation methodology must be considered, in a separate, earlier proceeding, such course has already been urged by AT&T in its 1989 rulemaking petition. The 1989 petition, like the current petition, urges prompt replacement of the existing method of allocating USF costs by a method based upon "revenues." AT&T explains that its petition herein "...updates the analysis in, but should not be deemed to supersede, the 1989 petition" (id. at 6, n. 7). Surely, it makes no sense for the Commission to establish a second, separate rulemaking proceeding to consider the same allocation issue which AT&T has already brought to the Commission's attention. To the extent that AT&T's petition herein was intended to convey a "heightened" (id. at 6) concern regarding the current allocation methodology and a demand for more rapid action by the Commission, this could more easily and appropriately have been conveyed by AT&T in a letter to the Commission regarding AT&T's earlier request for a rulemaking.

Sprint recognizes, of course, that the Commission has not yet acted on AT&T's earlier request. But, under the circumstances, the Commission's lack of zeal is entirely understandable. AT&T's 1989 petition for rulemaking was filed one day after the Commission concluded a rulemaking on the very subject AT&T sought to reopen,¹ a proceeding in which AT&T chose

¹Amendment of Part 69 of the Commission's Rules Relating to the Assessment of Charges for the Universal Service Fund and Lifeline Assistance, CC Docket Nos. 78-72 and 80-286, FCC 89-241.

not to participate. The Commission's order of August 7, 1989 terminating the rulemaking marked the third time in two years that the Commission had addressed the issue of USF cost allocation. Given the fact that AT&T has obviously slept on its rights, and the fact that after three decisions the Commission may well have regarded the question of USF allocation as settled for the time being, it was certainly not unreasonable for the Commission to decide not to spend its scarce resources on a new rulemaking to consider that question, at AT&T's behest, for a fourth time.²

In any case, even assuming, for purposes of argument, that the Commission improperly delayed acting on AT&T's 1989 petition, the proper course was for AT&T to insist upon more rapid action in the earlier proceeding, rather than to urge duplicative rulemakings. If the Commission did not see fit to hold a single rulemaking, it is obviously pointless to insist that the Commission hold multiple rulemakings to consider the same issue.

Finally, insofar as AT&T seeks a rulemaking that would proceed "concurrently" or "simultaneously" with the Commission's Interim Rulemaking to consider capping the USF, that request, obviously, is too late. The interim proceeding was completed by

²The reason for the Commission's reluctance to expend further resource is buttressed by the fact that the substantive arguments for a new allocation basis were as weak in 1989 as they are herein. As AT&T notes, its petition herein is something of an "update" of its earlier petition (id. at 6, n. 7). As shown in the next section, the reasons given by AT&T in support of its request for a change in the method of allocating USF costs are completely unconvincing.

the Commission in its Report and Order issued on December 23, 1993. In view of the timing of AT&T's petition herein--it was filed on November 24, or less than a month before the Report and Order was issued in the interim proceeding--its exhortation for "concurrent" or "simultaneous" relief in connection with the interim proceeding was hardly realistic. Again, even if AT&T's timing were better, there was plainly no valid reason for the Commission to consider the issue of USF cost allocation together with, or as part of, the interim proceeding. As the Commission made clear in its interim Report and Order,³ it shared the Joint Board's concern that the large and "erratic" increases in the USF made it "prudent to implement interim measures to moderate USF growth during the pendency of the permanent USF rulemaking" (Report and Order at para. 17). The Commission explained (id.)

...past efforts to revise jurisdictional separations procedures have involved lengthy transition periods to ease carriers' adjustment to potential jurisdictional shifts caused by the separations changes. These transition periods have significantly delayed full implementation of new methodologies. Because we shall soon initiate a rulemaking to evaluate the current high cost assistance mechanisms and, perhaps, to revise those procedures, it is sensible to adopt interim rules to prevent large increases in the USF during the pendency of the permanent rulemaking.

Because the continuity of the existing method of USF cost allocation would not threaten the Commission's ability to

³ See In the Matter of Amendment of Part 36 of The Commission's Rules And Establishment of a Joint Board, CC Docket No. 80-286, FCC 93-549.

establish permanent Part 36 rules at the conclusion of a comprehensive investigation, there was no basis for including this issue as part of an expedited interim proceeding.

In short, there is no reason for the Commission to initiate an additional "rulemaking" or "rulemakings" to consider the issue of USF cost allocation. AT&T has not only failed to show that the public interest would be served by such additional proceedings, it has not even made clear the timing, number and specific relief it is seeking in those proceedings.

II. THE COMMISSION SHOULD CONTINUE TO ALLOCATE USF COSTS ON THE BASIS OF PRESUBSCRIBED LINES.

A. AT&T Has Failed To Show That The Existing Method Of Allocating USF Costs Is Unfair, Discriminatory Or In Any Way Unlawful

AT&T's primary complaint against the present method of allocating USF costs based upon presubscribed lines is that such allocation "unduly favors" other IXCs at AT&T's expense and is therefore discriminatory. Specifically, AT&T claims that it is in an "anomalous position as the 'carrier of last resort' for low volume users"; that as a consequence of such status it "...must already subsidize low volume users to a far greater extent than other IXCs"; and that the current method of allocating USF costs therefore places a "double burden on AT&T by requiring it "...to subsidize yet another group of customers -- those in high-cost areas -- to a far greater extent than other IXCs" (AT&T petition at 7, 9-10).

Sprint would note at the outset that, with the possible exception of the few remaining exchanges that have not been converted to equal access, AT&T is not, in any sense, the

interexchange carrier "of last resort." Sprint is unaware of any Commission ruling that would give AT&T a special status or role--as the "carrier of last resort" or otherwise--not shared by its IXC competitors. And, given increasing IXC competition, one might have expected that AT&T would have abandoned this conceit years ago. Insofar as AT&T may have certain additional obligations in areas that have not been converted to equal access (and both the existence and extent of any such obligations is uncertain), any "burden" to AT&T is offset by the fact that AT&T receives all 1+ traffic from such unconverted exchanges. AT&T has never shown that its monopoly or near-monopoly in these exchanges is unprofitable and has never offered to relinquish this "burden," or any part of it, to another IXC.

AT&T's claim that the allocation of USF costs based upon presubscribed lines discriminates against it is equally unfounded.⁴ The USF is basically a subsidy mechanism to sustain service to all subscribers by requiring and distributing contributions to local carrier revenue requirements in high cost

⁴AT&T's assertion that its position has worsened in recent years does not withstand scrutiny. For example, according to data in its Appendix 2, its share of USF payments in 1989 was 83.8% (compared to a 65% share of common line minutes of use); in 1993(e), AT&T's share of USF payments had declined 8.6 percentage points, to 75.2% (while its share of CL MOU declined by 4.4 percentage points, to 60.6%). Moreover, as the number of IXCs subject to USF obligations has increased, AT&T's share of USF payments now much more closely approximates its share of total presubscribed lines (in 1989, AT&T accounted for 83.8% of USF payments, and 77.4% of presubscribed lines; in 1993(e), the figures were 75.4% and 72.4% respectively). Finally, AT&T's ratio of USF cost/MOU relative to other IXCs' USF/MOU has also improved, from 2.8 in 1989 to 1.98 in 1993(e).

areas. Since the monies collected by the USF are intended as a subsidy, these monies cannot be allocated on a cost-causative basis and, at least from an economic standpoint, any means of allocation must be considered to be largely arbitrary. If anything, since the USF subsidy is designed to support nontraffic sensitive loop plant, it would seem equitable to recover these costs on a nontraffic-sensitive basis from other nontraffic sensitive loop plant: that is, by assessing a flat charge on IXCs for each prescribed line.⁵

AT&T's insistence that this is discriminatory is premised upon the (unproven) assumption that "revenues" are the correct means of allocating USF costs and that any methodology which requires AT&T to pay more than would be the case under a revenue-based methodology is therefore discriminatory or otherwise impermissible. The weakness of AT&T's logic is all too apparent. AT&T has simply assumed the conclusion that needs to be proven; i.e., it has assumed that "revenues" are the only legitimate basis upon which USF costs can be allocated. As already noted, there is no basis for this conclusion in economics, nor is it sound because of any "equitable" considerations. Since AT&T's premise is incorrect, its claim of discrimination is incorrect as well. The fact that AT&T may make

⁵In its Recommended Decision in CC Docket No. 80-286, released December 10, 1993, FCC 93J-3, the Joint Board explicitly rejected "suggestions that the burden on interstate telecommunications should be evaluated in terms of the USF cost per minute of interstate toll usage" (para. 20), based in part on the fact that "the loop costs on which USF assistance is based are not, for the most part, usage sensitive" (id.).

a higher contribution to the USF based on presubscribed lines than would be the case with an allocative methodology based on "revenue" proves nothing other than that the two methodologies are different.

AT&T's further attempt to portray itself as unfairly burdened by both its regulatory past and its competitors' marketing efforts is particularly unseemly. The "first in" advantages obtained by AT&T as a result of its monopoly past are of enormous value to it. AT&T obtained the lion's share of interexchange traffic--both high volume and low volume users--without having to spend a dime on marketing or sales expense. These traffic volumes have enabled AT&T to achieve efficiencies and, more recently, a level of access charges, that no competitor can obtain. The fact that AT&T's monopoly past has also resulted in leaving it with a higher percentage of low volume presubscribed customers than its competitors does not even begin to offset the advantages received as a result of this same monopoly status. On balance, AT&T's position is not "anomalous" but, rather, quite enviable.

AT&T also suggests that its higher percentage of low volume customers may be due to the selective marketing of its competitors. Thus, AT&T states that its "competitors have targeted their marketing toward the more profitable, high volume customers" (Petition at 9). It would seem self-evident that all IXCs, including AT&T, would target their marketing efforts to the most profitable segments of the market. However, AT&T's competitors, like AT&T, also spend millions of dollars on general advertising directed to all subscribers, including low volume

residential users. Sprint has never discriminated against or refused to handle traffic of such smaller customers and its policies in this regard would appear no different than those of most other IXCs.

Second, AT&T argues that the allocation of USF costs based on subscriber lines violates Commission policy because it "artificially discourages IXCs from seeking out and serving low volume users" (id. at 10). As already discussed, the USF is a subsidy mechanism which taxes certain subscribers to support other (high cost area) subscribers. That USF contributions, like all other subsidy contributions, discourage use by subscribers that are forced to pay such contributions is clear as a matter of basic economics. This problem, however, is inherent in the USF's function as a subsidy mechanism. No matter what method is chosen to allocate USF costs, usage will be discouraged. For example, if allocation is based upon "total revenues," all usage would be discouraged.

AT&T's further assertion that the existing means of allocating USF costs based on prescribed lines "threatens to deny [low volume] users the benefits of interexchange competition" (id. at 11) is simply not credible. There is no threat to such competition. Sprint and MCI have thus far participated in every election in every exchange that has been converted to equal access. Users choosing Sprint have not been dropped because of a lack of usage. Unless access charges and, in particular, the charges for access transport, are significantly revised in the future, there is no reason to expect that competition for low usage customers will be impaired. Thus, to the extent rural

competition may be threatened, that threat does not come from the present method of allocating USF costs.

Third, AT&T claims that the Commission cannot rationally decide to address other significant USF issues without also addressing the manner in which the USF is funded. As already noted, insofar as the interim proceeding is concerned, AT&T's argument comes too late. This proceeding has already been completed. Insofar as a more comprehensive Part 36 rulemaking is concerned, AT&T's suggestion is refuted by its own insistence that the issue of USF cost allocation cannot await the conclusion of such comprehensive proceeding.

B. Allocating USF Costs Based On Presubscribed Lines Avoids Serious Problems Inherent In Any Allocative Method Based On "Revenues."

Allocation of USF costs on the basis of presubscribed lines presents few, if any, administrative problems. A count of presubscribed lines is readily obtained and readily verifiable. Thus, the existing method of allocation avoids serious difficulties that would inhere in any revenue-based allocation scheme.

As AT&T appears to recognize (id. at 13, n. 16), its allocative standard--"revenues"--is hardly a precise test. There are many different ways in which "revenues" can be related to and used as a basis for allocating costs. Revenues--even gross revenues--are defined in different ways by different companies for different purposes. For example, "gross revenues" may or may not include international settlements payments, uncollectibles, or, perhaps, intrastate or nonoperating revenues. Before

revenues could be used as a basis for allocation, that term would have to be precisely defined by the Commission so that each carrier would be reporting the "revenues" on the same basis.

The Commission would also have to develop auditing procedures to determine whether the revenues reported by the carrier were, in fact, correctly reported. Given the number of factors that may vary or be misallocated, such auditing procedures may well prove extremely difficult, time consuming and expensive to implement.


The Commission would have to determine which carriers' revenues would be included within the pool used as a basis for allocation. Thus, the Commission would have to determine whether to include the revenues of IXC resellers; 900, operator and enhanced service providers; interLATA revenues of local carriers; and, whether interstate or total carrier revenues should be used. Similarly, the Commission would have to determine how revenues would be related to the cost allocation procedure. AT&T acknowledges (n. 16 at 13) that "[t]here are a variety of alternative methods..." which can be used to relate revenues to a USF cost allocation. However, AT&T is careful not to select a method or to provide the Commission with a specific procedure which it would wish to have implemented. The reasons for AT&T's reticence here cannot be precisely known, but it is at least fair to suggest that the presentation of a particular methodology for allocation based upon revenues would almost certainly lay bare specific problems that would attend its implementation.

III. CONCLUSION

For the reasons stated above, Sprint respectfully urges that the Commission deny AT&T's petition.

Respectfully submitted,

SPRINT COMMUNICATIONS COMPANY L.P.



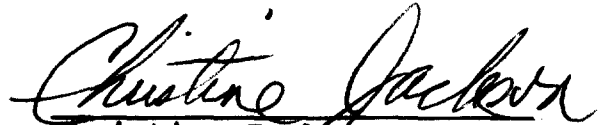
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January 14, 1994

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing OPPOSITION OF SPRINT CORPORATION as sent by United States first-class mail, postage prepaid, on this the 14th day of January, 1994, to the parties on the attached list.


Christine Jackson

January 14, 1994

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